

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT L. BUCKLEY and DEPARTMENT OF THE AIR FORCE,
KELLY AIR FORCE BASE, San Antonio, Tex.

*Docket No. 96-955; Submitted on the Record;
Issued January 28, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether the medical evidence establishes that appellant is entitled to a schedule award for hearing loss.

On November 2, 1994 appellant, a 64-year-old electronic systems mechanic, filed a notice of occupational injury, claiming a hearing loss sustained while working on aircraft. The Office of Workers' Compensation Programs accepted a bilateral, noise-induced hearing loss and referred appellant, along with a statement of accepted facts, to Dr. Anthony Sertich, a Board-certified otolaryngologist, for otologic and audiologic testing. Dr. Sertich reported that appellant's hearing loss was greater than the usual loss caused by aging and was due to his workplace exposure.

On November 22, 1995 the Office medical adviser, reviewed the otologic and audiologic testing of appellant by Dr. Sertich, found August 11, 1995 to be the date of maximum medical improvement, and determined that appellant had a zero percent monaural loss of hearing in both ears under the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition 1993) (A.M.A., *Guides*).

In a letter dated January 18, 1996, the Office informed appellant that he had no compensable hearing loss and that his claim for a schedule award was therefore denied.

The Board finds that the medical evidence establishes that appellant has no compensable hearing loss.

Section 8107 of the Federal Employees' Compensation Act¹ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage

¹ 5 U.S.C. §§ 8101, 8107(c).

loss of a member, function, or organ shall be determined. The method of determining this percentage rests in the sound discretion of the Office.² To ensure consistent results and equal justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.³

The Office evaluates permanent hearing loss, in accordance with the standards contained in the A.M.A., *Guides*, using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The losses at each frequency are added up and averaged. Then a “fence” of 25 decibel is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibel result in no impairment in the ability to hear everyday sounds under everyday conditions.⁴ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural loss. The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁵

In this case, the Office medical adviser correctly applied the Office’s standard procedures to the otologic and audiologic testing obtained by Dr. Sertich. Testing for the right ear at the relevant frequencies revealed decibel losses of 10, 10, 20 and 30 for a total of 70, which was divided by 4 for an average of 17.5; the average was reduced by the fence of 25 to arrive at no ratable loss.⁶

Testing for the left ear at the same frequencies revealed decibel losses of 5, 10, 10 and 25 decibels respectively for a total of 50. This figure was divided by 4 for an average of 12.5; the average was reduced by the fence of 25 to arrive at no ratable loss.

While Captain Tressie L. Waldo, chief of audiology at the employing establishment, found a moderate to profound high frequency hearing loss in both ears, she stated that appellant’s hearing impairment did not meet the severity standards set under the A.M.A., *Guides*. The results of the January 23, 1995, audiogram support her conclusion, revealing a 70 decibel loss in the right ear and a 45 decibel loss in the left ear.

Appellant argues that the August 23, 1995 letter from the Office inferred that he was entitled to an award, but this notification that appellant’s claim was accepted merely informed him how to apply for a schedule award, not that he was entitled to one.⁷

² *Danniel C. Goings*, 37 ECAB 781, 784 (1986).

³ *Arthur E. Anderson*, 43 ECAB 691, 697 (1992).

⁴ A.M.A., *Guides* 174-75.

⁵ *Donald A. Larson*, 41 ECAB 947, 951 (1990).

⁶ See *Louis V. Romero*, 42 ECAB 146, 150 (1990) (where average hearing loss at respective frequency levels is 25 decibels or less, there is no ratable loss).

⁷ See *Paul T. Mazza*, 41 ECAB 854, 857 (1990) (finding that appellant’s hearing loss resulted in no loss of wage-earning capacity as he continued working until retirement).

The January 18, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
January 28, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member